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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/607,891	06/27/2003	Raphael Rembrand	12808.20US11	7236
23552 7590 03/06/2008 MERCHANT & GOULD PC P.O. BOX 2903 MINNEAPOLIS, MN 55402-0903				
EXAMINER BRINEY III, WALTER F				
ART UNIT		PAPER NUMBER		
2615				
MAIL DATE		DELIVERY MODE		
03/06/2008		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/607,891	<b>Applicant(s)</b> REMBRAND ET AL.	
	<b>Examiner</b> Walter F. Briney III	<b>Art Unit</b> 2615	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 14 November 2007.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-58 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-12, 14-16 and 18-57 is/are rejected.
- 7) ☒ Claim(s) 13, 17 and 58 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Priority***

As noted in the notice mailed 08 March 2004 to the applicant, an appropriate reference to International Application PCT/IL02/00069 has not been made. The file wrapper for US Application 10/442,495 makes neither claim nor reference to continuity between itself and said International Application (or any other application for that matter), nor is said US application a National Stage Entry of said International Application. In addition, the period for inserting a correct reference has elapsed. As such, Rembrand et al. WO/02/09472 A2 appears to still be a valid reference. Examiner respectfully declines to withdraw the rejections based on *Rembrand* since the petition has not been granted and will likely not be granted because application 10/442,495 was simply not a continuation of any other applications.

### ***Continued Examination Under 37 CFR 1.114***

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 14 November 2007 has been entered.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

1. **Claims 1-5, 15, 16, 18, 21-34, 36, 37, 39, 40, 42, 44, 48, 49, 52, 53 and 56 are rejected under 35**

**U.S.C. 102(b) as being anticipated by Rembrand et al. WO 02/09473 A2).**

These claims are rejected for the same reasons presented in the Non-Final Office Action filed 16 March 2006 and incorporated herein by reference.

2. **Claims 6 and 51 are rejected under 35 U.S.C. 102(b) as being anticipated by Rembrand in view of the Mackie 1202VLZ Pro Mixer Owner's Manual (available at: [http://www.mackie.com/pdf/1202vlzpro\\_om.pdf](http://www.mackie.com/pdf/1202vlzpro_om.pdf)).**

These claims are rejected for the same reasons presented in the Non-Final Office Action filed 16 March 2006 and incorporated herein by reference.

3. **Claims 1, 20, 21 and 35 are rejected under 35 U.S.C. 102(b) as being anticipated by Kandel et al. (US Patent 6,353,671).**

These claims are rejected for the same reasons presented in the Non-Final Office Action filed 16 March 2006 and incorporated herein by reference.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. **Claims 43, 45, 46, 47 and 50 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rembrand.**

These claims are rejected for the same reasons presented in the Non-Final Office Action filed 16 March 2006 and incorporated herein by reference.

5. **Claims 19, 54 and 55 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rembrand in view of Bauer (US Patent 3,475,566).**

These claims are rejected for the same reasons presented in the Non-Final Office Action filed 16 March 2006 and incorporated herein by reference.

6. **Claims 7-12, 38 and 41 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rembrand in view of Stockham, Jr. et al. (US Patent 5,500,902) and further in view of Anderson (US Patent 4,396,806).**

These claims are rejected for the same reasons presented in the Non-Final Office Action filed 16 March 2006 and incorporated herein by reference.

7. **Claims 14 and 57 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rembrand in view of Stockham in view of Anderson and further in view of Sandlin (Textbook of Hearing Aid Amplification, © 2000).**

These claims are rejected for the same reasons presented in the Non-Final Office Action filed 16 March 2006 and incorporated herein by reference.

*Allowable Subject Matter*

The following is a statement of reasons for the indication of allowable subject matter:

8. **Claims 13, 17 and 58 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.**

**Claim 13** is limited to “the system according to claim 12,” as covered by *Rembrand* in view of Stockham and further in view of Anderson. None of the cited prior art either teaches providing an ambient sound amplitude signal to an A/D converter using a band-pass filter in the manner claimed. Thus, claim 13 is allowable over the cited prior art.

**Claim 17** is limited to “the system according to claim 1,” as covered by *Rembrand*. None of the cited prior art teaches an otoacoustic emissions profile source providing an otoacoustic emissions profile for use in the compensatory signal generator. Thus, claim 17 is allowable over the cited prior art.

**Claim 58** is substantially similar to claim 17, and is allowable over the cited prior art for at least the same reasons.

### ***Response to Arguments***

Applicant's arguments filed 18 September 2006 have been fully considered but they are not persuasive.

Apropos claims 1-12, 14-16 and 18-57 applicant alleges that *Rembrand* is not prior art, however, priority to the International Application has not been granted, and the petition for entry is still pending. Argument at 13. As such, *Rembrand* is still considered a valid reference under

35 U.S.C. 102(b). As this is applicant's only argument against *Rembrand*, the rejections of claims 1-12, 14-16 and 18-57 are maintained.

Apropos claims 1, 20, 21 and 35 applicant alleges regarding *Kandel* that (1) an earphone is not equivalent to a speaker and that (2) *Kandel* does not determining a compensatory waveform according to ear otoacoustic emissions. *Id.* at 14. These two statements constitute the entirety of applicant's argument, and are, therefore, mere allegation. No support for these positions is provided. Moreover, page 12, lines 19-20, of applicant's specification defines loudspeakers and earphones as equivalents. Regarding point (2), *Kandel* explicitly uses the phrase otoacoustic emission to describe the operation of the compensatory signal generator. *Kandel* at col. 9 ll. 42-57.

### ***Conclusion***

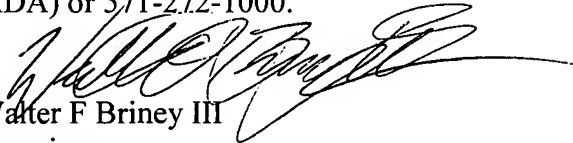
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Walter F. Briney III whose telephone number is 571-272-7513. The examiner can normally be reached on M-F 8am - 4:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sinh Tran can be reached on 571-272-7564. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Walter F Briney III  
Examiner  
Art Unit 2615

11/25/07